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Pierre Martin

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EXAMINER

CHUNG, SUSANNAH LEE

ART UNIT

PAPER NUMBER

1626

NOTIFICATION DATE

DELIVERY MODE

03/05/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chalin@smithpatent.com

Art Unit: 1626

DETAILED ACTION

Claims 1, 3-7, 24-28, 30-41 and 43 are pending in the instant application. Claims 2, 8-23, 29, 42 and 44 are canceled. Claims 25-28, 32-35, 37-39, and 43 are withdrawn.

Response to Non-Final Office Action

Acknowledgment is made of applicant's response and amendment of the claims filed on 12/17/2009.

Election/Restriction

Applicants request to clarify the restriction requirement and rejoinder of claims 24, 30-41 and 43 is acknowledged. See response page 13. Claims 24, 30-31, 36 and 40-41 were previously examined and rejoinder of claims 32-35, 37-39 and 43 has been considered and will be rejoined at this time. Therefore, process claims 1, 3-7, 24, 30-41 and 43 are drawn to the elected species. Claims 25-28 are withdrawn as nonelected subject matter. In view of the rejoinder of claims 32-35, 37-39 and 43, the restriction requirement mailed on 3/16/2009 is withdrawn with respect to groups I-V, and IX. The restriction requirement on Groups VI-VIII is maintained.

35 USC 112, 1st and 2nd paragraph Rejections

Claims 1, 4-6, 24, 30 and 42 were rejected under 35 U.S.C. 112, first and second paragraph, as failing to comply with the enablement and definiteness requirement for the terms "1,2,4-triazolyl forming reagent," "protecting groups," "derivatives," and "residues." Applicants arguments are acknowledged, and is found persuasive in part. The rejection of the term "1,2,4-triazolyl forming reagent" is withdrawn since the number

Art Unit: 1626

of 1,2,4-triazolyl forming reagents is limited and the scope of which would be known to a skilled artisan. The rejection of the terms "derivatives" and "residue" is withdrawn in view of the amendment to the claims. However the rejection of the term "protecting group" is maintained because there is no support in the specification for the term "protecting group." See previous office action, mail date 9/24/2009, page 7 and 8, wherein it states that there are no examples of protecting groups and the metes and bounds of the terms are unclear. It is asserted that cclaims must stand alone to define the invention and incorporation into claims by express reference to the specification is not permitted. Ex parte Fressola, 27 USPQ 2d 1608. Therefore, claims 1 and 24 are rejected for the term "protecting groups." If Applicants can point to additional protecting groups that were disclosed in the instant application, this rejection will be withdrawn.

Claim Objections

Claims 3-7, 30-31, 36 and 40-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Claims 2, 8-23, 29 42 and 44 are canceled.

Claims 1, 3-7, 24, 30-41 and 43 are drawn to the elected subject matter of a process of making a compound of formula [A] and the intermediate compound of formula [B].

Claims 25-28 are drawn to nonelected subject matter of compounds and processes of making a formula [D], [C], and [O].

Art Unit: 1626

Claims 1 and 24 are rejected.

Claims 3-7, 30-41, and 43 are objected.

The closest prior art of record is Dalmases Barjoan (WO/2004/014877), which teaches a similar process of making Riztriptan using a hydrazine, but does not teach the use of the instantly claimed hydrazine of formula [B], wherein an alkyl-amino group is present.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 1626

Telephone Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susannah Chung whose telephone number is (571) 272-6098. The examiner can normally be reached on M-F, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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/Susannah Chung/
Examiner, Art Unit 1626